

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

Case No. 7:24-CV-01079-M-RN

UNITED STATES OF AMERICA, )  
                                  )  
Plaintiff,                    )  
                                  )  
v.                             )                                    ORDER  
                                  )  
DUANE MONTRIK BURTON,     )  
DARNELL WARD, and            )  
DARNELL WARD, JR.,            )  
                                  )  
Defendants.                    )  
                                  )  
                                  )

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This matter comes before the court on a document filed by Defendant Duane Motrik Burton construed liberally as a Motion to Dismiss and Motion for Summary Judgment [DE 6]. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Robert T. Numbers, II issued a memorandum and recommendation (“M&R”), recommending that this court deny Defendant’s motions and permit the matter to proceed to discovery. DE 15. Judge Numbers instructed the parties to file any written objections to the recommendation within fourteen days after its service. *Id.* No objections have been filed,<sup>1</sup> and the matter is now ripe for consideration by this court.

A magistrate judge’s recommendation carries no presumptive weight. The court “may accept, reject, or modify, in whole or in part, the . . . recommendation[ ] . . . receive further evidence

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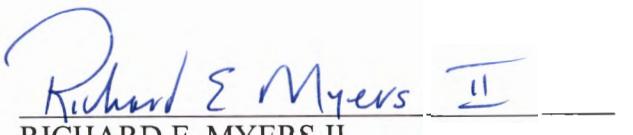
<sup>1</sup> Judge Numbers issued the M&R on April 4, 2025; assuming three additional days for mailing under Rule 6(d) of the Federal Rules of Civil Procedure, the deadline for objections has long passed.

or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1); *accord Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for “clear error” and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated therein, Defendant Burton’s motion to dismiss pursuant to Rule 12(b)(6) [DE 6] is DENIED and any request for summary judgment under Rule 56 is DENIED WITHOUT PREJUDICE as premature. Burton shall file a “responsive pleading” to the Complaint—i.e., an Answer—within fourteen (14) days after service of this order. *See* Fed. R. Civ. P. 12(a)(4). The action shall proceed to discovery and is referred to Judge Numbers for such proceeding.

The court notes that a filing on March 4, 2025, appears to be an “Answer” filed pro se by Defendants Darnell Ward and Darnell Ward, Jr. *See* DE 14. The court directs the Clerk of the Court to treat the filing as an Answer and modify the court’s docket sheet as appropriate. The court informs these Defendants that, going forward, they must each sign any document filed on their behalf. *See* Fed. R. Civ. P. 11.

SO ORDERED this 7<sup>th</sup> day of May, 2025.

  
RICHARD E. MYERS II  
CHIEF UNITED STATES DISTRICT JUDGE